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Federal Communications Commission
Office of the Secretary

June 26, 2007

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

Re: CSR-7113-Z and CS Docket No. 97-80: RCN Corporation's Request for Waiver of 47 C.F.R. §76.1204(a)(1) and Request for Confidential Treatment

Dear Ms. Dortch:

On behalf of RCN Corporation ("RCN"), enclosed as Attachment 1 please find the Declaration of Michael T. Sicoli, Executive Vice President and Chief Financial Officer of RCN ("Declaration"). As set forth more fully in Mr. Sicoli's Declaration, RCN requests a limited deferral of enforcement of the integration ban, 47 C.F.R. §1204(a)(1), so that it can continue to deploy its existing inventory of new DCT-3416 (HD/DVR) and DCT-6200 (HD-only) digital set-top boxes with integrated security until the new DCH-3416 (HD/DVR) and DCH-3200 (HD-only) digital set-top boxes with removable CableCARD security features that RCN has ordered from Motorola are received into RCN's inventory. The projected Motorola delivery date for those new set-top boxes is currently August 25, 2007, and early to mid-September 2007, respectively.

For the reasons set forth in Mr. Sicoli's declaration, RCN believes that this request for limited deferral is consistent with the Commission's January 10, 2007, Memorandum Opinion and Order granting a conditional waiver to BendBroadband,¹ in which the Commission noted that it:

understand[s] the difficulties that small cable operators may face in complying with the July 1, 2007 deadline, particularly since manufacturers may prioritize orders from the largest cable operators. Therefore, we note that, ... BendBroadband ... can request that we defer enforcement of the July 1, 2007 deadline so long as it can demonstrate that it has placed orders for set-top boxes that comply with the

¹ Memorandum Opinion and Order, *In the Matter of Bend Cable Communications, LLC, d/b/a BendBroadband*, CSR-7037-Z and CS Docket No. 97-80, DA 07-47, at p. 4, ¶10 (released Jan. 10, 2007) ("*BendBroadband Order*").

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that it has placed orders for set-top boxes that comply with the integration ban but that its orders will not be fulfilled in time for it to comply with the deadline.²

In addition to these requested deferrals for equipment that has been ordered but will not be delivered as of July 1, 2007, RCN also requests a limited deferral of enforcement of Section 76.1204(a)(1) so that it can continue to deploy its existing inventory of new limited-featured (i.e. no HD or DVR capability) DCT-700 set-top boxes with integrated security for a limited period in the event that the Commission does not grant RCN's request for a limited waiver of Section 76.1204(a)(1)³ prior to the July 1, 2007 effective date of the integration ban.

RCN's Petition for Limited Waiver sought a waiver to permit RCN's operating subsidiaries to continue to deploy the Motorola DCT-700 until February 2009. The Commission has not yet acted on RCN's Petition for Limited Waiver. RCN has therefore not yet ordered any of the significantly more expensive limited-featured (i.e. no HD or DVR capability) DCH-100 set-top boxes that incorporate removable CableCARD security feature. As attested by Mr. Sicoli, RCN has not received any assurance that such an order could be canceled if the Commission were to grant the requested waiver, and RCN believes it would have been financially imprudent to order such equipment prior to action by the Commission or the passage of the July 1, 2007 deadline if the Commission declines to act prior to that time. Therefore, in the event that the Commission denies the Petition for Limited Waiver or declines to act on it prior to the July 1, 2007, effective date, RCN will promptly place orders for a sufficient number of DCH-100s to meet its needs and requests a deferral of enforcement of the ban to permit it to deploy its existing inventory of new DCT-700s until it has received such DCH-100 set-top boxes into inventory. Motorola has advised RCN that if it places an order for DCH-100s it can expect that order to be shipped in approximately 90-120 days.

Request for Confidential Treatment

RCN requests confidential treatment of certain ordering and pricing information contained in the Declaration and the Exhibits attached thereto. Specifically, RCN requests that the non-redacted versions of these documents that it is submitting pursuant to Commission Rules 47 C.F.R. §§0.457 and 0.459 and which contain confidential information be withheld from public inspection. Accordingly, the pages of the attached Declaration and Exhibits have therefore been marked "**CONFIDENTIAL - NOT FOR**

² *BendBroadband Order* at pp. 4-5, ¶10; *see also* Memorandum Opinion and Order, *In the Matter of GCI Cable, Inc.*, CSR-7130-Z and CS Docket No. 97-80, DA 07-2010, at pp. 7-8, ¶18 (setting forth information to be submitted in connection with a request for deferral of the July 1, 2007 deadline).

³ RCN filed its request for a limited waiver on November 17, 2006 (the "Petition for Limited Waiver").

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PUBLIC INSPECTION.” The information contained in these documents, which consists of the details of orders placed by RCN with Motorola and the pricing of Motorola equipment, is competitively sensitive information and should not be made available for public inspection. A release of this information would have a negative impact on RCN and Motorola. Pursuant to Commission rule, 47 C.F.R. §0.459(b), RCN provides justification for the confidential treatment of this information in Attachment 2 to this letter.

RCN is also submitting, under separate cover, for inclusion in the Commission's public files, redacted versions of Mr. Sicoli's Declaration and Exhibits 1 and 2. The redacted version of the documents are marked "**REDACTED - FOR PUBLIC INSPECTION,**" with the confidential information redacted. Exhibits 1 and 2, which consist of copies of RCN's requisition orders, have been omitted in their entirety from the redacted version of this filing.

For both versions of this filing, RCN is providing an original and four copies and, for both versions, an extra copy of each to be stamped and returned to the courier.

Should you have any questions concerning this filing, or the request for confidentiality, please do not hesitate to contact me.

Respectfully submitted,

Jean L. Kiddoo
Jean L. Kiddoo

Enclosures

cc: Ms. Monica Desai
Ms. Michelle Carey
Ms. Mary Beth Murphy
Mr. Steve Broecker
Mr. Andrew Long
Mr. Brendan Murray

ATTACHMENT 1

Declaration of Michael T. Sicoli

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
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)	
RCN Corporation's Request for)	CSR-7113-Z
Waiver of 47 C.F.R. § 76.1204(a)(1))	CS Docket No. 97-80
)	
)	

DECLARATION

I, Michael T. Sicoli, hereby declare that the following is true and correct to the best of my knowledge, information and belief:

1. I am Executive Vice President and Chief Financial Officer of RCN Corporation ("RCN").
2. In preparing this Declaration, I have relied on information and records supplied to me by employees at RCN with responsibility for customer premises equipment inventory control and ordering.
3. On November 17, 2006, RCN filed a request for a limited waiver of Section 76.1204(a)(1) of the Commission's Rules to permit RCN Telecom Services, Inc. and RCN's other operating subsidiaries to continue to deploy the Motorola DCT-700 until February 2009 ("Petition for Limited Waiver"). That Waiver Request was placed on public notice by the Commission on February 12, 2007. Comments were filed on March 5, 2007 and RCN's Reply Comments were filed on March 15, 2007. RCN filed supplements to the Petition for Limited Waiver on February 13, 2007, and June 12, 2007, to demonstrate that the grant of the Petition for Limited Waiver is consistent with the Commission's orders granting waivers to other parties.

4. On January 10, 2007, in its Memorandum Opinion and Order granting a conditional waiver to BendBroadband,¹ the Commission noted that it:

understand[s] the difficulties that small cable operators may face in complying with the July 1, 2007 deadline, particularly since manufacturers may prioritize orders from the largest cable operators. Therefore, we note that, ... BendBroadband ... can request that we defer enforcement of the July 1, 2007 deadline so long as it can demonstrate that it has placed orders for set-top boxes that comply with the integration ban but that its orders will not be fulfilled in time for it to comply with the deadline.²

5. RCN currently deploys two models of advanced, full-featured Motorola digital set-top boxes that have integrated security and navigation features and for which RCN has not sought a waiver of the requirements of Section 76.1204 of the Commission's rules: the DCT-3416, which offers HD and DVR capabilities, and the DCT-6200, which is an HD-only model.

6. RCN has placed orders for compliant Motorola set-top boxes with advanced HD and DVR capabilities.

7. RCN has placed an order for [REDACTED] Motorola DCH-3416 digital set-top boxes with a removable CableCARD security feature. A copy of the RCN procurement order forms reflecting this order are attached as Exhibit 1 hereto.

- a. These DCH-3416s will be deployed to RCN to customers throughout RCN's markets who want both HD and DVR capabilities.
- b. This order is sufficient to handle RCN's needs for such set-top boxes for a period of approximately three months.

¹ Memorandum Opinion and Order, *In the Matter of Bend Cable Communications, LLC, d/b/a BendBroadband*, CSR-7037-Z and CS Docket No. 97-80, DA 07-47, at p. 4, ¶10 (released Jan. 10, 2007) ("BendBroadband Order").

² *BendBroadband Order* at pp. 4-5, ¶10; *see also* Memorandum Opinion and Order, *In the Matter of GCI Cable, Inc.*, CSR-7130-Z and CS Docket No. 97-80, DA 07-2010, at pp. 7-8, ¶18 (setting forth information to be submitted in connection with a request for deferral of the July 1, 2007 deadline).

- c. Motorola has informed RCN that the order will not be filled by July 1, 2007.
- d. The currently expected shipping date from Motorola is August 25, 2007.
- e. RCN therefore requests deferral of enforcement of the integration ban so that it can continue to deploy its remaining inventory of new DCT-3416s that include HD and DVR capabilities after July 1, 2007 and until such time as the requested DCH-3416s HD/DVRs are received into RCN's inventory.
- f. Unless Motorola's delivery schedule is extended, RCN does not plan to order any additional integrated DCT-3416s.

8. RCN has also placed an order for [REDACTED] Motorola DCH-3200 digital set-top boxes with a removable CableCARD security feature. A copy of the RCN procurement order forms reflecting this order are attached as Exhibit 2 hereto.

- a. These DCH-3200s will be deployed to customers throughout RCN's markets who want HD but not DVR capabilities.
- b. This order is sufficient to handle RCN's needs for such set-top boxes for a period of approximately three months.
- c. Motorola has informed RCN that the order will not be filled by July 1, 2007.
- d. The earliest expected shipping date from Motorola is early to mid-September.
- e. RCN therefore requests deferral of enforcement of the integration ban so that it can continue to deploy its remaining inventory of new HD-only

DCT-6200s after July 1, 2007 and until such time as the requested HD-only DCH-3200s are received into RCN's inventory.

- f. Unless Motorola's delivery schedule is extended, RCN does not plan to order any additional integrated DCT-6200s.

9. RCN's Petition for Limited Waiver asked for a waiver of the integration ban to permit it to continue to deploy the Motorola DCT-700 limited-feature set top box until February 2009. The Commission has not yet acted on RCN's Petition for Limited Waiver. RCN continues to hope that the Commission will recognize the merits of RCN's request, but the July 1, 2007 deadline for compliance with Section 76.1204(a)(1) is fast approaching, and as a result RCN must now seek a deferral of the deadline in the event that the Petition for Limited Waiver is denied or the July 1, 2007 date passes without Commission action.

- a. The DCH-100 is the least expensive set-top box alternative that will be available from Motorola with CableCARD capabilities and is therefore the set-top box that RCN would need to purchase for deployment to customers who do not want or cannot afford HD and DVR capabilities in the event that its waiver is not granted.
- b. RCN has not yet placed an order for DCH-100s. RCN has no assurance that Motorola would allow it to cancel a pre-existing order for DCH-100s in the event that the Commission were to grant the Petition for Limited Waiver. RCN therefore believes that it would have been financially imprudent to order such equipment prior to action on the Petition for Limited Waiver.

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- c. RCN has contacted Motorola and understands that if it places an order for DCH-100s it could expect that order to be shipped in approximately 90-120 days.
- d. In the event that the Commission denies RCN's requested waiver or the July 1, 2007 deadline passes without Commission action, RCN is prepared to promptly place an order for a sufficient quantity of DCH-100s to meet its inventory needs.
- e. To the extent that one of these events occurs and RCN must place an order for DCH-100s, RCN requests deferral of enforcement of the integration ban to permit it to deploy its existing inventory of new DCT-700 limited-feature units until such time as the requested limited-feature DCH-100s are received into RCN's inventory.

I declare that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 25th day of June, 2007.



Michael T. Sicoli
Executive Vice President and
Chief Financial Officer
RCN Corporation

EXHIBIT 1

RCN Order Forms (DCH-3416)

[REDACTED]

EXHIBIT 2

RCN Order Forms (DCH-3200)

[REDACTED]

ATTACHMENT 2

Confidentiality Justification

RCN requests confidential treatment of the information being provided in its Request for Waiver of 47 C.F.R. §76.1204(a)(1) because this information is competitively sensitive and its disclosure would have a negative competitive impact on RCN were it made publicly available. Such information would not ordinarily be made available to the public, and should be afforded confidential treatment under 47 C.F.R. §§0.459 and 0.459.

47 C.F.R. §0.457

Specific information in Mr. Sicoli's Declaration and Exhibits is confidential and proprietary to RCN as "trade secrets and commercial or financial information" under Section 47 C.F.R. §0.457(d). Disclosure of such information to the public would risk revealing company-sensitive proprietary information in connection with RCN's ongoing business and operations.

47 C.F.R. §0.459

Specific information in the Declaration and Exhibits is also subject to protection under 47 C.F.R. §0.459, as demonstrated below.

Information for which confidential treatment is sought

RCN requests that specific information in Declaration of Michael T. Sicoli, Executive Vice President and Chief Financial Officer of RCN and Exhibits 1 and 2, marked as "[REDACTED]" be treated on a confidential basis under Exemption 4 of the Freedom of Information Act. This information is competitively sensitive information that RCN maintains as confidential and is not normally made available to the public. Release of the information would have a substantial negative impact on RCN since it would provide competitors with commercially sensitive information as to RCN's expected rate of deployment and cost of digital set-top boxes and, with respect to certain pricing information, Motorola (the supplier of the equipment to RCN). The non-redacted version of RCN's filing is marked as **"CONFIDENTIAL - NOT FOR PUBLIC INSPECTION."**

Commission proceeding in which the information was submitted

The information is being submitted in CSR-7113-Z and CS Docket No. 97-80: RCN Corporation's Request for Waiver of 47 C.F.R. §76.1204(a)(1).

Degree to which the information in question is commercial or financial, or contains a trade secret or is privileged

The information designated as confidential is information regarding RCN's order for digital set-top boxes. As noted above, the data is competitively sensitive information which is not normally released to the public as such release would have a substantial negative competitive impact on RCN.

Degree to which the information concerns a service that is subject to competition and manner in which disclosure of the information could result in substantial harm

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The Commission has already considered that the information contained in this Request for Waiver may be treated as confidential. *See Matter of GCI Cable, Inc., Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules; Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, CSR-7130-Z, CS Docket No. 97-80, Memorandum Opinion and Order, ¶18 (May 4, 2007). The release of this confidential and proprietary information would cause RCN competitive harm by allowing its competitors to become aware of sensitive proprietary information regarding the operation of RCN's business.

Measures taken by RCN to prevent unauthorized disclosure; and availability of the information to the public and extent of any previous disclosures of the information to third parties

RCN has treated and continues to treat the non-public information disclosed in this Request for Waiver as confidential and has protected it from public disclosure to parties outside of the company.

Justification of the period during which RCN asserts that the material should not be available for public disclosure

RCN cannot determine at this time any date on which this information should not be considered confidential.

Other information RCN believes may be useful in assessing whether its request for confidentiality should be granted

Under applicable Commission decisions, the information in question should be withheld from public disclosure.